IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.7.2007

Coram :

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MR. JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.1106 of 2007

Commissioner of Income Tax
Chennai. ... Appellant

Vs.

M/s. Y.K. Shoji Stone Indo (P) Ltd.,
111, Medavakkam Tank Road
Kilpauk, Chennai - 10. ... Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 22.2.2007 made in I.T.A.No.1881/Mds/06 for the assessment year 1999-2000 and against the order dated 25.5.2006 of the order of the Commissioner of Income Tax (Appeals) III Chennai in ITA.No.509/2004-05/A III and against order in CO.Cir III33011-Y/1999 - 2000 dated 1.2.2005 of the Deputy Commissioner of Income Tax Company Circle III (3) Chennai.

For Appellant : Mr. Naresh Kumar

J U D G M E N T

(Judgment of the Court was delivered by K.Raviraja Pandian, J.)

The Revenue has filed this appeal by formulating the following Substantial Questions of Law.

"i. Whether, in the facts and in the circumstances of the case, the rectification of assessment by deducting the amount eligible for deduction under Section 80HHC from the profits, and not from 30% of the book profit was not erroneous as not being on a debatable issue ?

ii) Whether the adjustment to any deduction claimed by the assessee in total contravention to the provisions of statute would not amount to rectification of a mistake apparent on record for the purpose of section 154 ?

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2. The facts of the case culled out from the statement of facts filed by the Revenue goes as follows.

The assessee is a Private Limited Company whose return for the assessment year 1999-2000 was processed under Section 143(1) of the Income Tax Act (hereinafter referred to as the "Act"). Thereafter, the Assessing Officer found a mistake apparent on the record that inasmuch as deduction under section 80HHC of the Act was deducted from 30% of the book profit. According to the Assessing Officer, this mistake was glaring mistake apparent on the face of the record. The Assessing Officer issued notice under Section 154 of the Act for rectification and an order was passed by him under Section 154 of the Act after hearing the assessee who contended that there is no jurisdiction to revise the assessment under section 154 of the Act as there was no mistake apparent on the face of the record. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) who by his order dated 25.5.2006, confirmed the assessment. The assessee carried on the matter on further appeal in the Income Tax Appellate Tribunal by filing appeal in ITA.No.1881 of 2006. The Tribunal allowed the appeal on the ground that the debatable issue cannot be a subject matter for rectification under section 154 of the Income Tax Act. The tribunal has also relied the decision of the Supreme Court in T.S. BALARAM, INCOME TAX OFFICER, VS. VOLKART BROTHERS AND OTHERS reported in 82 ITR 50, wherein it has been held that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record, which is not amenable for rectification under Section 154 of the Income Tax Act. A similar view is also taken by the Supreme Court in the case of CIT VS. HERO CYCLES PVT. LTD., reported in 228 ITR 463.

3. Mr. Nareshkumar, learned counsel appearing for the revenue submitted that the mistake is glaring on the face of the order and it can be regarded as apparent on the face of the record.

4. We heard the argument of the learned counsel on either side and perused the materials on record.

5. The error pointed out by the appellant herein is that the assessing officer has committed a mistake inasmuch as deduction under Section 80HHC was deducted from 30 percent of the book profit instead of deducting the same from the whole profit. Hence, it is a glaring mistake, which could be rectified under Section 154. But it is the contention of the assessee that the procedure followed by the assessing officer in granting the deduction under Section 80HHC from out of the book profit is the correct procedure and the procedure now sought to be projected by the revenue is not correct and it is sought to be done in order to have an advantage

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in favour of the revenue. In any event it was contended that the issue was one of debatable issue. We are also of the view that the issue in controversy is a debatable issue.

6. It is well recognised law that any erroneous assessment cannot be the subject matter for rectification under Section 154 of the Income-tax Act. The erroneous order of assessment can be rectified only under procedure known to law by carrying the matter before the appropriate authority to rectify the erroneous order or revise it as per law. A debatable point cannot be a reason for rectification under Section 154. Further, in order to invoke Section 154 for rectification of the mistake, the mistake sought to be rectified should be a mistake apparent on the record and must be an obvious and patent mistake and not something which could be established by long drawn process of reasoning on the point in issue on which there may be conceivably two opinions. A decision on a debatable point of law cannot be regarded as a mistake apparent on the face of the record amenable for rectification under Section 154 of the Income-tax Act. Useful reference can be had to the judgments of BALARAM, INCOME TAX OFFICER VS. VOLKART BROTHERS AND OTHERS reported in 82 ITR 50 and COMMISSIONER OF INCOME-TAX VS. HERO CYCLES PRIVATE LIMITED reported in 228 ITR 463. Hence, we do not find any question of law, much less, substantial question of law, for entertaining this appeal as the issue has already been covered by the decisions of the Supreme Court. Therefore, the Tax Case (appeal)is dismissed.

kb/usk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Assistant Registrar
Income Tax Appellate Tribunal
III Floor, Rajaji Bhavan,
Besant Nagar, Chennai.

2.The Commissioner of Income-tax
(Appeals) III, Chennai

3.The Deputy Commissioner of Income-tax
Company Circle III (3) Chennai.

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4. The Commissioner of Income Tax,
Chennai.

+ 1 cc to M/s. Pushya sitaraman, Sr Standing Counsel for IT Department SR No. 46342

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